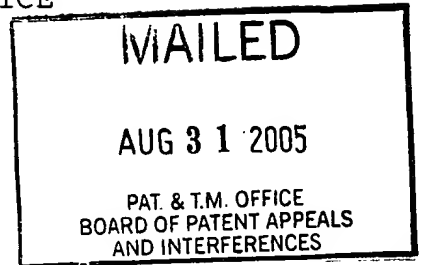


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
\_\_\_\_\_



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Ex parte TING TINA YE and GREGORY E. MIRIGIAN  
\_\_\_\_\_

\_\_\_\_\_  
Application No. 09/945,225  
\_\_\_\_\_

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER  
\_\_\_\_\_

This application was electronically received at the Board of Patent Appeals and Interferences on August 3, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 27, 2004, appellants filed a Petition under 37 CFR § 1.181 to Withdraw Finality of Office Action. This petition was also mentioned on page 2 of the reply brief filed February 25, 2005. There was no communication from the examiner regarding the status of the Petition. Therefore, it is not clear from the

record whether the examiner considered the Petition under 37 CFR § 1.181. A communication notifying appellants of the response to the Petition is required.

In addition, on December 27, 2004, the examiner filed an examiner's answer. There is no indication that an appeal conference was held because the examiner's answer contains only the typed name of the conferee (i.e., Angela Sykes). No signature or initialing by the conferee is present. The Manual of Patent Examining Procedures (MPEP) § 1208 states:

The participants of the appeal conference should include (1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal.

Upon receipt of the appeal case by the Board of Patent Appeals and Interferences (Board), the Board should review the application prior to assigning an appeal number to determine whether an appeal conference has been held.

Accordingly, it is

ORDERED that this application be returned to the examiner for: 1) consideration of the Petition under 37 CFR § 1.181 to Withdraw Finality of Office Action; 2) appropriate notification by the examiner to appellants of such consideration; 3) proper indication that an appeal conference was held;


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4) notifying the appellants, in writing, that the appeal conference was held; and 5) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: \_\_\_\_\_

  
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